

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

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|--|---|--------------------------|
| In the matter of the amendment of ARM |) | NOTICE OF PUBLIC HEARING |
| 36.12.101, 36.12.102, 36.12.103, |) | ON PROPOSED AMENDMENT |
| 36.12.107, 36.12.120, 36.12.121, |) | |
| 36.12.1301, 36.12.1401, 36.12.1601, |) | |
| 36.12.1701 through 36.12.1706, |) | |
| 36.12.1801, 36.12.1901 through |) | |
| 36.12.1904, 36.12.2001 regarding water |) | |
| right permitting |) | |

To: All Concerned Persons

1. On August 23, 2012 at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than August 6, 2012, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, PO Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; e-mail mheffner@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (50) remain the same.

(51) "Pre-application review" means the applicant or the applicant's attorney or consultant or others who may know about the proposed project have met with the department to discuss details of the proposed project and application.

(51) through (78) remain the same but are renumbered (52) through (79).

AUTH: 85-2-113, 85-2-308, 85-2-370, MCA

IMP: 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360 through 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-514, 85-2-518, 85-2-520, MCA

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the World Wide Web at <http://dnrc.mt.gov/wrd/default.asp>. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) through (p) remain the same.

(q) Form No. 633, "Aquifer Test Data Form";

(q) through (ac) remain the same but are renumbered (r) through (ad).

(ade) Form No. 647, "Notice of Completion of Emergency Fire Protection Development", which must be submitted for groundwater developments by local governmental fire agencies organized under Title 7, chapter 33, MCA, for emergency fire protection; and

(aef) Form No. 648, "Petition to Subordinate a State Water Reservation"; ;
and

(ag) Form No. 649, "Surface Water Measurement Data Form".

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-316, 85-2-402, 85-2-424, 85-20-401, MCA

36.12.103 FORM AND SPECIAL FEES

(1) remains the same.

(2) The department will assess the following filing fees:

(a) For an Application for Beneficial Water Use Permit, Form No. 600, filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, or in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, or a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, or filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute, there shall be a fee of \$1000. If the application meets the requirements for a pre-application review as determined by the department, the fee shall be \$800;

(b) remains the same.

(c) For an Application for Beneficial Water Use Permit, Form No. 600, not filed pursuant to 85-2-330, 85-2-336, 85-2-341, 85-2-343, or 85-2-344, MCA, nor in an administratively closed basin pursuant to 85-2-319, 85-2-321, or 85-2-322, MCA, nor a controlled groundwater area pursuant to 85-2-506 and 85-2-507, MCA, nor filed under a compact pursuant to Title 85, chapter 20, MCA, for all surface water, or a groundwater appropriation of greater than 35 gallons per minute there shall be a fee of \$800. If the application meets the requirements for a pre-application review as determined by the department, the fee shall be \$600;

(d) through (f) remain the same.

(g) \$900 \$700 for an Application to Change a Water Right, Form No. 606, except for an application that meets the requirements for a pre-application review as

determined by the department, in the following instances, where there shall be a \$700 \$200 fee;:

~~(i) if the change application concerns a replacement well greater than 35 gpm or ten acre-feet, or a municipal well that does not exceed 450 gpm, or replacement reservoir located on the same source; or~~

~~(ii) if the change application concerns only moving or adding stock tanks to an existing system;~~

(h) \$200 for an Application to Change a Water Right, Form No. 606 in the following instances:

(i) if the change application concerns a replacement well greater than 35 gpm or ten acre-feet, or a municipal well that does not exceed 450 gpm, or replacement reservoir located on the same source; or

(ii) if the change application concerns only moving or adding stock tanks to an existing system;

~~(h) through (x) remain the same but are renumbered (i) through (y).~~

~~(3) through (3)(c) remain the same.~~

(d) Form No. 633, Aquifer Test Data Form;

~~(d) remains the same but is renumbered (e).~~

~~(ef) Form No. 640, Certification of Water Right Ownership Update; and~~

~~(fg) Form No. 648, Petition to Subordinate a State Water Reservation; and~~

(h) Form No. 649, Surface Water Measurement Data Form.

~~(4) remains the same.~~

AUTH: 85-2-113, MCA

IMP: 85-2-113, 85-2-306, 85-2-311, 85-2-312, 85-2-402, 85-2-436, 85-20-401, MCA

36.12.107 FILING FEE REFUNDS (1) An applicant may be entitled to a refund if the applicant withdraws an application prior to a correct and complete application ~~public notice~~ or a deadline set by the department ~~for the applicant to make an application correct and complete.~~

(2) If it is determined that mitigation is required for an Application for Beneficial Water Use Permit and the applicant does not have a mitigation plan the applicant may withdraw the application prior to the department's issuance of a Preliminary Determination Decision.

~~(2a) No refund will be authorized, if substantial direct processing costs have been accrued in making the application correct and complete prior to publication or department waiver of publication.~~

(b) If the permit application is resubmitted with a mitigation plan within two years of the withdrawal of the original application, the original application fee amount will be applied to the new application fee amount.

~~(3) through (8) remain the same.~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-113, 85-2-302, MCA

36.12.120 BASIN CLOSURE AREA EXCEPTIONS AND COMPLIANCE

(1) through (4) remain the same.

~~(5) An applicant must identify the potentially affected area and provide a map depicting that area.~~

~~(6) A net depletion analysis must be submitted with the water right application and must include but is not limited to analysis of the following factors within the potentially affected area:~~

~~(a) evidence addressing the hydraulic connection between the source aquifer and all surface water. Surface water means, in addition to ARM 36.12.101(64) and for the purposes of 85-2-360 through 85-2-362, MCA, includes but is not limited to irrigation canals and drains;~~

~~(b) evidence of propagation of drawdown from pumping a proposed well or other groundwater diversion and volume, rate, timing, and location of any resulting surface water effects;~~

~~(c) evidence of the comparison of the proposed flow rate and period of diversion to similar types of existing water uses;~~

~~(d) estimates of the monthly volume of water consumed by a proposed project through evaporation, evapotranspiration, and all other forms of consumption associated with the proposed project;~~

~~(e) an assessment of potential return flows to a source aquifer or surface water source and the volume, rate, timing, and location of return flows;~~

~~(f) in addition to ARM 36.12.101(56) and for the purposes of 85-2-361, MCA, return flow includes but is not limited to any treated wastewater if the treated wastewater will be used as part of an aquifer recharge plan;~~

~~(g) the volume, rate, timing, and locations of accretions to surface water that is not consumed and subsequently returns to surface water; and~~

~~(h) a water balance table must be included that describes the monthly and total annual water balance for the proposal.~~

~~(7) An applicant must provide a list and map of the points of diversion of surface water appropriation rights and groundwater rights on record with the department that are located within the potentially affected area.~~

~~(85) Information required by the hydrogeologic assessment pursuant to 85-2-361, MCA, may not be sufficient to meet applicable criteria under 85-2-311, MCA, including but not limited to adverse effect to a prior appropriator. The applicant for a beneficial water use permit pursuant to 85-2-311, MCA, is responsible for providing sufficient evidence to meet all applicable criteria.~~

AUTH: 85-2-113, 85-2-370, MCA

IMP: 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-350, 85-2-351, 85-2-360 through 85-2-364, 85-2-368, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-415 through 85-2-419, 85-2-436, 85-2-437, 85-2-439, 85-2-501 through 85-2-512, 85-2-601 through 85-2-606, 85-2-608, 85-2-804 through 85-2-806, MCA

36.12.121 AQUIFER TESTING REQUIREMENTS (1) Aquifer testing must follow standard procedures that are discussed in hydrogeology textbooks and professional literature. A hydrogeologist, hydrologist, or engineer familiar with aquifer

testing procedures must supervise the aquifer test; however, the supervisor does not need to be on site.

(a) Applicants are encouraged to confer with department staff prior to designing an aquifer test to ensure that the test will not have to be repeated, which may require additional expense.

(b) Department staff will provide guidance on testing procedures, monitoring, and reporting, but will not provide technical support or assistance. Requests for variance from testing requirements must be submitted to the appropriate regional office manager. There are numerous tests that can be performed on wells and aquifers, with a variety of objectives and procedures. An adequate aquifer test will depend on factors such as whether the well is located in a basin closure area (see ARM 36.12.120), the expected pumping schedule of the well, the potential interference with existing water rights and the characteristics of the aquifer in which the well is completed.

(2) Minimum information that must be submitted with applications:
~~Applicants are encouraged to confer with department staff prior to designing an aquifer test to ensure that the test will not have to be repeated, which may require additional expense.~~

~~(a) Department staff will provide guidance on testing procedures, monitoring, and reporting, but will not provide technical support or assistance.~~

(a) a topographic map with labeled location of production and observation wells and water discharge point;

(b) if available, a geologic map, stratigraphic, geomorphic, or lithologic descriptions, and drilling logs;

(c) distances between the pumping well and the observation well, and depths, dimensions, and perforated intervals of each well as specified on Form No. 633;

(d) wellhead elevation, surveyed elevations if available;

(e) a description of testing methods; and

(f) Form 633, in electronic format, with all information and data provided.

(3) Minimum testing procedures are as follows.

(a) Pumping must be maintained at a constant discharge rate equal to or greater than the proposed pumping rate for the entire duration of the test.

(b) Discharge rate must be measured with a reliable measuring device and recorded with clock time according to the schedule on Form 633.

~~Aquifer testing must follow standard procedures that are discussed in hydrogeology textbooks and professional literature. The following are preferred aquifer testing procedures:~~

~~(a) A hydrogeologist, hydrologist, or engineer familiar with aquifer testing procedures must supervise the aquifer test, however, the supervisor does not need to be on site.~~

~~(b) Aquifer test data Form No. 633, or equivalent, must be used to record the data required for the test.~~

~~(c) Pumping must be maintained at a constant discharge rate equal to or greater than the proposed pumping rate for the entire duration of the test. If the discharge rate varies, the applicant must note the clock time and discharge rate.~~

~~(d) and (e) remain the same but are renumbered (c) and (d).~~

(e) Eight-hour duration drawdown and yield tests must be conducted on additional production wells.

~~(f) Discharge of the pumped well must be measured with a reliable measuring device, which can include a barrel, in-line flow meter, flume, or weir.~~

~~(g) Discharge rate must be monitored and recorded with clock time and adjusted if necessary at 15-minute intervals during the first three hours of the aquifer test and at frequent intervals until the end of the test to maintain a constant discharge.~~

~~(h) remains the same but is renumbered (f).~~

~~(4) The following procedures are preferred to ensure monitoring is adequate:~~

~~(ag) One or more observation wells must be completed in the same water-bearing zone(s) or aquifer as the proposed production well and close enough to the production well so that drawdown is measurable and far enough that well hydraulics do not affect the observation well. If existing wells are monitored they must not be pumped, or if pumped should be monitored at a frequency necessary to separate the effects of the pumping.~~

~~(b) One or more observation wells must be completed in the overlying water-bearing zone(s) or aquifer if the proposed production well is purported to be completed in a hydraulically disconnected deeper aquifer.~~

~~(c) An observation well can be an existing well. An existing well should not be pumped, or if pumped should be monitored at a frequency necessary to separate the effects of its pumping.~~

~~(d) New observation wells must be constructed as described in ARM Title 36, chapter 21, subchapter 6. However, observation wells less than ten feet deep are not subject to those rules. In those cases, observation wells might be constructed by simple excavation, or installing PVC pipe, perforated black pipe, or a sand point.~~

~~(e) remains the same but is renumbered (h).~~

~~(fi) Groundwater levels in the production well and observation well(s), at least one of the observation wells in the source aquifer, and at least one observation well in the overlying water-bearing zone or aquifer must be monitored at frequent intervals for at least two days prior to beginning the aquifer test to evaluate background water-level trends and the prepumping hydraulic gradient. An applicant must evaluate and correct for background water-level trends.~~

~~(gj) Groundwater-level drawdown in the production well and monitored observation well(s) during the pumping phase of the aquifer test Water levels in the production well and observation well(s) must be measured with 0.01-foot precision according to the schedule specified on Form No. 633.~~

~~(h) Groundwater-level recovery in the production and monitored observation well(s) must be measured with 0.01-foot precision according to the schedule specified on Form No. 633 or at a minimum, according to the specified schedule on Form No. 633 for the first 24 hours of recovery and four times per day until end of the recovery test.~~

~~(5) A report describing the testing and monitoring procedures and presenting analyses, interpretations, and conclusions must be submitted with the application. The following reporting requirements are preferred:~~

- ~~(a) a topographic map with labeled locations of production and observation wells, discharge point, surface water monitoring sites, and a scale bar and north arrow;~~
- ~~(b) if available, a geologic map, stratigraphic, geomorphic, or lithologic descriptions, and drilling logs;~~
- ~~(c) distances between the pumping well and the observation well, and depths, dimensions, and perforated intervals of each well as specified on Form No. 633;~~
- ~~(d) surveyed wellhead elevations and staff gage elevations if basin closure testing is required;~~
- ~~(e) a narrative description or conceptual model that describes the aquifer system;~~
- ~~(f) a description of testing methods;~~
- ~~(g) groundwater level and surface water monitoring data;~~
- ~~(h) aquifer testing data, transmissivity and storage coefficient determinations and effects to groundwater and surface water availability;~~
- ~~(i) analyses, interpretations, and conclusions; and~~
- ~~(j) all pumping schedules and drawdown and recovery data must be submitted in electronic format.~~

AUTH: 85-2-113, MCA

IMP: 85-2-302, 85-2-311, 85-2-330, 85-2-337, 85-2-341, 85-2-343, 85-2-402, 85-2-418, 85-2-506, 85-2-508, MCA

36.12.1301 PERMIT AND CHANGE APPLICATION ACCEPTANCE

(1) A permit application will not be assigned a priority date and will be returned to the applicant if any of the following is not completed on the application form or included with the application:

- ~~(a) through (f) remain the same.~~
- ~~(g) the applicant's notarized signature; and~~
- (g) for a groundwater well, aquifer testing results conforming to ARM

36.12.121;

- (h) a map conforming to standards identified in ARM 36.12.111; and
- (h) remains the same but is renumbered (i).

(2) A change application will be returned to the applicant if any of the following is not completed on the application form:

- ~~(a) general abstracts of the water rights being changed reflecting the proposed changes;~~
- ~~(b) applicant's notarized signature; and~~
- (a) the name and address of the applicant;
- (b) the water right(s) being changed;
- (c) the type of change;
- (d) a map conforming to standards identified in ARM 36.12.11; and
- (c) remains the same but is renumbered (e).

AUTH: 85-2-113, MCA

IMP: 85-2-310, MCA

36.12.1401 PERMIT AND CHANGE APPLICATION MODIFICATION

(1) Any element of a permit or change application may be modified prior to the department's issuance of a preliminary determination ~~or after an application has been published.~~

(2) remains the same.

(3) ~~If a modification requires republication, the~~ The priority date of a permit application or the date received of a change application will be changed to the date the last modification was made if a modification changes the nature or scope of the permit or change application information. A change in the nature or scope of the permit or change includes the following types of modifications:-

~~(4) Republication is required if a modification changes the nature or scope of the permit or change application information. The following require republication:~~

(a) through (i) remain the same.

(j) any modification where the effect on the source of supply or its tributaries changes the impact described from the originally submitted ~~published~~ information.

~~(5) For modifications made after an application has been published, the cost of republication and mailing of individual notices must be paid by the applicant.~~

~~(6) A new analysis of the application criteria must be submitted when an application modification requires republication and the department will make a new correct and complete determination on the modifications prior to republication.~~

(7) remains the same but is renumbered (4).

AUTH: 85-2-113, MCA

IMP: 85-2-302, 85-2-307, MCA

36.12.1601 WATER RIGHT PERMIT AND CHANGE - CORRECT AND COMPLETE DETERMINATION (1) The department shall determine whether an application for a provisional permit or change authorization is correct and complete by reviewing:

(a) information publically available within its expertise; and

(b) that information which is submitted in the application.

(1) and (2) remain the same but are renumbered (2) and (3).

~~(34) Providing correct and complete information is not necessarily the same as proving the statutory criteria. The department, with or without receipt of objections can only grant an application if the criteria for issuance of a permit or change application are proven met.~~

~~(45) A water right permit application will be deemed correct and complete if a permit applicant's information, required to be submitted by ARM 36.12.110 through 36.12.116, 36.12.120, 36.12.121, 36.12.1301, 36.12.1401, 36.12.1701 through 36.12.1707, and 36.12.1802, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required ~~a criteria~~ addendums, have been filled in with the required information.~~

~~(56) A water right change application will be deemed correct and complete if an applicant's information, required to be submitted by ARM 36.12.110 through 36.12.116, 36.12.121, 36.12.1301, 36.12.1401, 36.12.1801, 36.12.1802, 36.12.1901~~

through 36.12.1904, and 36.12.2001, conforms to the standard of substantial credible information and all the necessary parts of the application form requiring the information, including any required ~~a criteria addendums~~, have been filled in with the required information.

AUTH: 85-2-302, MCA

IMP: 85-2-303, MCA

36.12.1701 FILING A PERMIT APPLICATION

(1) through (4) remain the same.

(5) Form No. 600 and any applicable addendums must be completed and must describe the details of the proposed project. The form and addendums must be filled in with the required information. The following must be included in the permit application materials:

~~(a) calculations, references, and methodologies used to determine flow rate, volume, or reservoir capacity must be included in the application materials;~~

(i) remains the same but renumbered (a).

(b) remains the same.

~~(c) the legal descriptions for the point of diversion and place of use, which must be identified as per ARM 36.12.110;~~

(d) through (f) remain the same but are renumbered (c) through (e).

(i) for appropriations over 4000 acre-feet ~~af~~ or more and 5.5 cfs or more, or for water marketing, additional information is required, as per 85-2-310 and 85-2-311, MCA;

(g) and (h) remain the same but are renumbered (f) and (g).

~~(h) if a permit application is to supplement another water right, the water right numbers and abstracts of the associated water rights;~~

~~(j) an explanation of why supplemental water is needed and how the associated water rights will be managed;~~

(k) remains the same but is renumbered (i).

~~(l) an application that is only to increase the flow rate or volume must reflect a value of zero in the nonapplicable field. For example, if an applicant is applying to only increase the flow rate the volume field should reflect zero of water taken from a source, but no additional volume is needed, the application flow rate blank should be completed with the additional flow of water requested and the blank for acre-feet (volume) should reflect zero;~~

(m) and (n) remain the same but are renumbered (k) and (l).

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-311, MCA

36.12.1702 PERMIT APPLICATION CRITERIA - PHYSICAL SURFACE WATER AVAILABILITY

(1) remains the same.

(2) If actual stream gaging records are available, or the source has been otherwise measured and quantified by a public entity, the records shall ~~they should~~ be used to estimate the median of the mean monthly flow rates and volumes for the

stream gaging station period of record during the proposed months of diversion at the source of supply in the amount the applicant seeks to appropriate, the following is required:

- ~~(a) the medians of the monthly average flow rates and volumes for the stream gaging station period of record during the proposed months of diversion;~~
- ~~(b) a legible copy or excerpt of the data source, study or report(s) used in documenting water availability in the source of supply; and~~
- ~~(c) a description of all conclusions, calculations, data, and assumptions used in estimating water availability.~~

(3) If actual flow rate and volume data are not available to estimate the monthly median flows, then the department shall ~~applicant will need to~~ use an accepted method for estimating surface water flow rates and volumes in conjunction with discharge measurements to validate the estimation technique used. Some accepted methods are listed in (65).

(4) When stream flow gaging station data are not available and monthly median flow estimation techniques are used, the following stream discharge data must be collected:

(a) Stream flow measurements in cfs or gpm must be collected at least once every month during the proposed period of diversion at the most suitable location on the source of supply, and at or directly upstream of the proposed point of diversion. Measurements taken and submitted under this method must include:

- ~~(i) a legible copy of the actual flow measurements;~~
- ~~(ii) calculations used to establish flow rates in cfs or gpm;~~
- ~~(iii) the dates measurements were taken, with a description of current weather conditions; Weather conditions include sky conditions, noting any rain and snow, approximate temperature, and approximate wind conditions, e.g., "partly cloudy, light wind, about 60 degrees" or "light rain, calm, about 65 degrees" or "clear, moderate wind, about 40 degrees".~~
- ~~(iv) the type of measuring device or method used; and~~
- ~~(v) a written legal land description or map clearly showing where the measurements were taken.~~

(b) If it is not possible to take measurements every month due to high spring flow conditions, at least one measurement must be collected during the lowest flow period.

(c) Measurements must be submitted on Form 649 in electronic format with all information and data provided.

~~(5) If the application involves new storage of surface water such as a reservoir, pond or pit, or enlargement of a natural or manmade lake, the application must include the following information:~~

- ~~(a) that the source of supply has the volume of water physically available for the proposed beneficial use;~~
- ~~(b) information and data that show the amount of water to be stored is physically available during a median year and in the amount the applicant seeks to appropriate using the methods described in (2) and (3); and~~
- ~~(c) projected evaporation and seepage losses.~~
- (6) remains the same but is renumbered (5).

(76) Other professionally documented hydrologic methods for estimating stream flow or annual runoff which may be applicable and acceptable to the department, including the Orsborn method, Mannings equation, U.S. Natural Resources and Conservation Service-developed mean annual runoff data, and drainage area information paired to gaged streams in similar type basins may be acceptable. The department will determine the acceptability of other methods on a case-by-case basis.

~~(a) If one of these methods is used, the applicant must also include a brief description of the method used and assumptions and calculations used in estimating flow rates and volumes.~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.1703 PERMIT APPLICATION CRITERIA - PHYSICAL GROUND WATER AVAILABILITY (1) Applicants for ground-water must follow aquifer testing requirements and provide to the department, at minimum, information and data in conformance with ARM 36.12.121 ~~substantial credible information demonstrating that water is available for their use from the source aquifer in the amount the applicant seeks to appropriate during the proposed period of diversion.~~

(2) ~~Information demonstrating physical ground water availability must include~~ The department will complete an evaluation of drawdown in the applicant's production well for the maximum pumping rate and total volume requested in the permit application using the information provided from the aquifer test.

(3) The department will compare the drawdown projected for the proposed period of diversion ~~must be compared~~ to the height of the water column above the pump in the proposed production well to determine if the requested appropriation can be sustained.

(4) The requirements of ARM 36.12.121 must be followed, unless a variance has been granted by the department.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.1704 PERMIT APPLICATION - EXISTING LEGAL DEMANDS

(1) remains the same.

(2) The department will ~~applicant must~~ identify the existing legal demands on the source of supply and those waters to which it is tributary and which the ~~department applicant~~ determines may be affected by the proposed appropriation.

(a) For groundwater appropriations, this shall include identification of existing legal demands for any surface water source that could be depleted as a result of the groundwater appropriation.

~~(3) The applicant must provide an abstract of those water rights identified.~~

~~(4) After an application is deemed correct and complete, for public notice purposes the department shall, independent of the information provided by the applicant under this chapter, identify existing water right owners that may be affected by the proposed application.~~

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

36.12.1705 PERMIT APPLICATION CRITERIA - COMPARISON OF PHYSICAL WATER AVAILABILITY AND EXISTING LEGAL DEMANDS

(1) To determine if water is legally available, the department will ~~applicant must~~ compare the physical water supply at the proposed point of diversion and the legal demands within the area of potential impact. ~~An applicant must become familiar with senior water rights operations to accurately evaluate the effect to the senior water right.~~

(2) For groundwater appropriations, in addition to (1) the department will compare the physical water supply for any surface water source that could be depleted as a result of the groundwater appropriation and the legal demands within the area of potential impact.

~~(2) Applicants must analyze the senior water rights on a source of supply and those waters to which it is tributary within the area of potential impact and provide a written narrative comparing the physical water supply at the point of diversion during the period of diversion requested and the legal demands that exist for the water supply during that same period.~~

~~(3) If known patterns of use differ from the legal water rights filings, an explanation may be submitted explaining the current water use operation. For example, if a water reservation has not been perfected, that information may help to explain water is legally available.~~

AUTH: 85-2-113, 85-2-302, MCA
IMP: 85-2-302, MCA

36.12.1706 PERMIT APPLICATION CRITERIA - ADVERSE EFFECT

(1) and (2) remain the same.

(3) A written narrative must be provided addressing the applicant's plan to prevent potential adverse effects to the existing water rights, certificates, permits, and water reservations. The plan may include:

- (a) an agreement to measure appropriations and monitor water supplies;
- (b) a plan to appropriate only when stream flows exceed certain trigger flow levels;
- (c) a mitigation or aquifer recharge plan; or
- (d) other conditions necessary to prevent adverse effects. identified in ARM 36.12.1704.

~~(4) For surface water applications, in addition to (1), (2), and (3), the applicant shall explain the rate and timing of depletions from the source of supply and its downstream tributaries and what effect that will have on other water rights.~~

~~(5) For groundwater applications, in addition to (1), (2), and (3), the applicant shall describe how water levels in wells of prior water rights will be lowered and the rate, timing, and location of any depletions from hydraulically connected surface waters.~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.1801 PERMIT AND CHANGE APPLICATIONS - BENEFICIAL USE

(1) remains the same.

(2) The applicant must explain the following:

(a) how the purpose for the water benefits the applicant; and

(b) that the requested flow rate and volume for each purpose is reasonably needed to accomplish that purpose.

(3) The applicant does not need to explain that the flow rate and volume for each purpose is reasonable if:

(a) the requested volume of water for each purpose conforms to standards set out in ARM 36.12.115 for a permit application or ARM 36.12.1902 for a change application; and

(b) there are no other associated or overlapping water rights appurtenant to the proposed place of use.

~~(3) An application to change must contain information explaining why the requested flow rate and volume to be changed are reasonable for the intended purpose.~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.1901 FILING A CHANGE APPLICATION

(1) An applicant who desires to change the point of diversion, place of use, purpose of use, or place of storage of a water right must file an application to change a water right (Form No. 606) and any applicable addendums.

(2) remains the same.

(3) In addition to the change application rules, an applicant proposing to temporarily temporary change to application for instream flow must submit the information required under 85-2-407 and 85-2-408, or 85-2-436, MCA.

(4) through (6) remain the same.

~~(7) A current detailed water right abstract of each water right being changed must be submitted with proposed changes noted on the abstract. The abstract should reflect how the water right would appear if the change application was granted.~~

~~(8) Multiple water rights may be changed on one application if upon completion of a project, the diversion, place of use, purpose, and storage information will be exactly the same for each water right. all of the water rights being changed accomplish a single proposed project; if not, separate applications must be filed. The applicant shall provide a chart or table of the combined water rights demonstrating how each water right both individually and cumulatively contributes to the project.~~

~~(9) through (13) remain the same but are renumbered (8) through (12).~~

~~(14) For a change application that is only to add stock tanks to an existing stock water system, the following rules apply:~~

(a) Form No. 606 must be completed and must describe the details of the proposed project. Form No. 606 and any applicable addendum(s) must be filled in with the required information;

~~(b) a current department generated water right abstract of each water right being changed must be submitted. The proposed changes must be noted on the abstract. The abstract should reflect how the water right would appear if the change application was granted;~~

~~(cb) the applicant must show that each water right to be changed has been used and must explain the extent of the historic use including the flow rate and volume; and~~

~~(dc) the applicant must provide information to show that the historic flow rate diverted will be adequate for the new use, even though additional stock tanks may be farther away from the source of supply; and-~~

(d) for changes from instream flow based on 85-2-222, MCA, to stock tank(s), the maximum flow rate authorized for the new use will be 35 gallons per minute.

(15) remains the same but is renumbered (14).

AUTH: 85-2-112, 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-436, MCA

36.12.1902 CHANGE APPLICATION - HISTORIC USE

(1) through (1)(b) remain the same.

(c) historic information for a certificate of water right must be described as it was used at the filing date of the completion notice; and

(d) historic information for an exempt or nonfiled water right must be described as it was completed prior to July 1, 1973; and-

(e) when a change application has been granted on or after July 1, 1973, the department may request additional historic information for a statement of claim as it was used prior to July 1, 1973.

(2) Final Water Court approved stipulations; and master's reports, ~~or examination information~~ related to the water right being changed must be referenced submitted with the application; however, this information or an abstract of a water right from the department or the Montana Water Court by itself is not sufficient to prove the existence or extent of the historical use.

(3) remains the same.

(4) ~~An applicant~~ The department shall compare historical acres irrigated to acres identified as irrigated in the Water Resources Survey, if available for the place of use. If the Water Resources Survey does not support the historical irrigation alleged in the application, the applicant shall explain why. Information from irrigation journals, logs, or old aerial photographs can be submitted for consideration.

(5) and (6) remain the same.

(7) ~~The department will~~ An applicant shall provide substantial credible information to corroborate the historic use, including the following of each water right being changed:

(a) through (t) remain the same.

~~(8) A narrative must be included in the application materials explaining why the historic operation of the right can be considered reasonable and typical of the purpose for which the historic right was used.~~

(98) The following information may be used by the department to help an applicant establish the requirements under (7):

(a) aerial photographs depicting irrigated land:

(i) 1979, 1997, and 2005 photos showing the irrigated land ~~would be beneficial;~~

(b) through (l) remain the same.

~~(10) Calculations for each water right showing how the historic flow rate, consumed and diverted volumes for each water right, and capacity were determined must be included in the application materials, and the methodology employed must be described.~~

(11) remains the same but is renumbered (9).

(10) The department shall calculate the historic diverted volume for water rights with the purpose of irrigation using the following equation: Historic Diverted Volume = (Volume_{historic consumptive use}/On-farm efficiency) + Volume_{conveyance loss};

(a) "conveyance loss" means the portion of water diverted at the headgate that does not arrive at the irrigated place of use due to seepage and evapotranspiration from the ditch;

(b) "seepage loss" means ((flow area)*(ditch length)*(loss rate)*(days))/43,560 ft²/ac; and

(c) "on-farm efficiency" refers to the percent of the water delivered to the field that is used by the crop.

(11) If the applicant chooses not to use the methodology in (10), they shall provide additional information on the Historic Water Use Addendum.

(12) remains the same.

(13) The following may be used to calculate ditch capacity, historic available water supply, and reservoir capacity:

(a) Manning's equation;

(b) Orsborn's equation;

(c) Blaney-Criddle equation; and

(d) the department will determine the acceptability of other reports or methods on a case-by-case basis.

(14) The historic consumptive use methodology in (16) may be used to determine the historic consumptive volume for irrigation. The methodology that the department shall use to determine historic consumptive use for water rights with a purpose of irrigation is based on data from the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), and generated using the USDA NRCS Irrigation Water Requirements (IWR) program. If the applicant chooses not to use accept the methodology used by the department, they the applicant shall provide additional information on the Historic Water Use Addendum ~~provide evidence showing how the historical consumptive use was calculated and why that amount is less than or greater than the methodology described in (16).~~

(15) IWR Data for Seasonal Alfalfa Evapotranspiration County Management Factor are shown in Table 1 and ~~may~~ will be used by the department to identify the

historic consumptive volume unless additional information is provided by the applicant on the Historic Water Use Addendum. If this table is used to establish the historic consumptive volume, the department will recognize that volume as a reasonable calculation, unless a valid objection is received which offers proof that the volume is inaccurate.

(16) To determine the historic consumptive volume using the table, the department will complete the following steps:

(a) through (f) remain the same.

(g) If the historic consumptive volume determined by this methodology exceeds the historic diverted amount, the department may request additional information in order to resolve the discrepancy. This may result in a reduction of the consumptive volume.

Table 1 - Montana County Weather Station IWR Data for Seasonal Alfalfa Evapotranspiration and Montana County Management Factor.

| Column A | Column B | Column C | Column D | Column E | Column F | Column G |
|------------|-----------------|-----------|--|--|--|--|
| County | Weather Station | Elevation | IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches) | IWR Center Pivot Irrigation Seasonal ET (inches) | Management Factor Percentage 1964 - 1973 | Management Factor Percentage 1997 - 2006 |
| Beaverhead | Dillon | 5239 | 18.34 | 20.74 | 63.7% | <u>88.3%</u> |
| | Wisdom | 6060 | 7.34 | 9.29 | | |
| | Jackson | 6480 | 8.35 | 10.30 | | |
| | Lakeview | 6710 | 8.39 | 10.67 | | |
| | Lima | 6583 | 13.75 | 16.01 | | |
| Big Horn | Busby | 3430 | 20.32 | 22.88 | 55.4% | <u>88.1%</u> |
| | Hardin | 2905 | 27.46 | 29.96 | | |
| | Hysham 25 | 3100 | 20.25 | 22.86 | | |
| | Wyola | 3750 | 19.19 | 21.89 | | |
| | Yellowtail Dam | 3305 | 28.07 | 31.30 | | |
| Blaine | Chinook | 2420 | 20.80 | 23.57 | 58.7% | <u>66.0%</u> |
| | Harlem | 2362 | 21.62 | 24.27 | | |
| Broadwater | Townsend | 3840 | 19.42 | 21.88 | 69.2% | <u>87.1%</u> |
| | Trident | 4040 | 20.64 | 23.31 | | |
| Carbon | Joliet | 3776 | 22.41 | 25.12 | 58.3% | <u>70.8%</u> |
| | Red Lodge | 5500 | 15.57 | 18.41 | | |
| Carter | Ekalaka | 3425 | 20.13 | 23.14 | 38.4% | <u>54.1%</u> |
| | Ridgeway | 3320 | 20.28 | 23.01 | | |
| Cascade | Cascade 20 | 4600 | 14.12 | 16.63 | 57.3% | <u>78.8%</u> |
| | Cascade 5 | 3360 | 17.90 | 20.75 | | |
| | Great Falls | 3675 | 19.78 | 22.55 | | |
| | Neihart | 4945 | 12.17 | 15.08 | | |
| | Sun River | 3340 | 18.10 | 20.65 | | |
| Chouteau | Big Sandy | 2700 | 21.52 | 24.37 | 52.5% | <u>78.3%</u> |

| Column A | Column B | Column C | Column D | Column E | Column F | Column G |
|------------|--------------------|-----------|--|--|---|---|
| County | Weather Station | Elevation | IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches) | IWR Center Pivot Irrigation Seasonal ET (inches) | Management Factor Percentage 1964 - 1973 | <u>Management Factor Percentage 1997 - 2006</u> |
| | Fort Benton | 2640 | 21.98 | 24.75 | | |
| | Geraldine | 3130 | 20.30 | 23.27 | | |
| | Iliad | 2950 | 21.55 | 24.27 | | |
| | Loma | 2700 | 22.64 | 25.37 | | |
| | Shonkin | 4300 | 13.32 | 16.70 | | |
| Custer | Miles City | 2628 | 26.68 | 29.55 | 54.5% | <u>81.1%</u> |
| | Mizpah | 2480 | 23.80 | 26.57 | | |
| | Powderville | 2800 | 24.83 | 27.68 | | |
| Dawson | Glendive | 2076 | 26.01 | 28.99 | 56.8% | <u>72.0%</u> |
| Deer Lodge | No weather station | | | | See appropriate adjacent county | |
| Fallon | Plevna | 2780 | 22.48 | 25.34 | 47.6% | <u>47.6%</u> |
| Fergus | Denton | 3620 | 15.39 | 18.12 | 48.8% | <u>68.3%</u> |
| | Grass Range | 3490 | 18.93 | 21.93 | | |
| | Lewistown | 4167 | 15.54 | 18.44 | | |
| | Roy | 3450 | 19.94 | 22.78 | | |
| | Winifred | 3240 | 17.86 | 20.75 | | |
| Flathead | Creston | 2949 | 14.97 | 17.81 | 87.6% | <u>96.6%</u> |
| | Hungry Horse Dam | 3160 | 14.66 | 18.06 | | |
| | Kalispell | 2972 | 16.45 | 19.03 | | |
| | Olney | 3165 | 12.50 | 15.16 | | |
| | Polebridge | 3600 | 10.20 | 12.50 | | |
| | West Glacier | 3154 | 13.74 | 16.78 | | |
| | Whitefish | 3100 | 15.74 | 18.61 | | |
| Gallatin | Bozeman Exp Farm | 4775 | 16.84 | 19.55 | 73.5% | <u>98.6%</u> |
| | Bozeman MT State | 4913 | 18.42 | 21.39 | | |
| | Hebgen Dam | 6667 | 10.09 | 12.77 | | |
| Garfield | Cohagen | 2710 | 22.36 | 24.99 | 43.4% | <u>46.1%</u> |
| | Jordan | 2661 | 23.58 | 26.32 | | |
| | Mosby | 2750 | 24.51 | 27.34 | | |
| Glacier | Babb | 4300 | 12.12 | 14.87 | 59.7% | <u>73.9%</u> |
| | Cut Bank | 3855 | 16.01 | 18.60 | | |
| | Del Bonita | 4340 | 14.61 | 17.30 | | |

| Column A | Column B | Column C | Column D | Column E | Column F | Column G |
|------------------|----------------------------------|-----------|--|--|---|---|
| County | Weather Station | Elevation | IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches) | IWR Center Pivot Irrigation Seasonal ET (inches) | Management Factor Percentage 1964 - 1973 | <u>Management Factor Percentage 1997 - 2006</u> |
| | East Glacier | 4810 | 10.60 | 13.26 | | |
| | St Mary | 4560 | 13.64 | 16.60 | | |
| Golden Valley | Ryegate | 4440 | 17.60 | 20.17 | 62.6% | <u>64.6%</u> |
| Granite | Philipsburg Ranger Station | 5270 | 12.90 | 15.26 | 86.5% | <u>96.6%</u> |
| Hill | Fort Assinniboin e | 2613 | 22.42 | 25.20 | 54.1% | <u>60.4%</u> |
| | Guilford | 2820 | 19.54 | 22.06 | | |
| | Havre | 2585 | 20.94 | 23.46 | | |
| | Simpson | 2815 | 19.67 | 22.13 | | |
| Jefferson | Boulder | 4904 | 17.08 | 19.47 | 61.0% | <u>81.1%</u> |
| Judith Basin | Moccasin Exp Station | 4243 | 16.17 | 19.06 | 49.3% | <u>68.8%</u> |
| | Raynesford | 4220 | 16.14 | 19.05 | | |
| | Stanford | 4860 | 16.74 | 19.69 | | |
| Lake | Bigfork | 2910 | 17.37 | 20.61 | 55.0% | <u>68.7%</u> |
| | Polson | 2949 | 20.46 | 23.23 | | |
| | Polson Kerr Dam | 2730 | 21.37 | 24.08 | | |
| | St Ignatius | 2940 | 19.53 | 22.33 | | |
| Lewis & Clark | Augusta | 4070 | 17.51 | 20.13 | 60.1% | <u>79.7%</u> |
| | Austin | 4790 | 15.41 | 17.96 | | |
| | Helena | 3828 | 20.23 | 22.69 | | |
| | Holter Dam | 3490 | 23.88 | 26.61 | | |
| | Lincoln Ranger Station | 4575 | 12.87 | 15.22 | | |
| Liberty | Chester | 3132 | 19.28 | 21.74 | 54.8% | <u>63.9%</u> |
| | Joplin | 3300 | 19.01 | 21.40 | | |
| | Tiber Dam | 2850 | 22.98 | 25.46 | | |
| Lincoln | Eureka Ranger Station | 2532 | 20.63 | 23.26 | 47.1% | <u>58.8%</u> |
| | Fortine | 3000 | 16.09 | 18.69 | | |
| | Libby Ranger Station | 2096 | 21.20 | 23.71 | | |
| | Libby | 3600 | 11.06 | 13.36 | | |

| Column A | Column B | Column C | Column D | Column E | Column F | Column G |
|-------------|----------------------------------|-----------|--|--|---|---|
| County | Weather Station | Elevation | IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches) | IWR Center Pivot Irrigation Seasonal ET (inches) | Management Factor Percentage 1964 - 1973 | <u>Management Factor Percentage 1997 - 2006</u> |
| | Troy | 1950 | 19.90 | 22.68 | | |
| Madison | Alder | 5800 | 14.33 | 16.75 | 65.2% | <u>83.3%</u> |
| | Ennis | 4953 | 17.19 | 19.71 | | |
| | Glen | 5050 | 17.81 | 20.01 | | |
| | Norris | 4750 | 20.88 | 23.97 | | |
| | Twin Bridges | 4777 | 16.98 | 19.22 | | |
| | Virginia City | 5770 | 15.57 | 18.13 | | |
| McCone | Brockway | 2630 | 20.74 | 23.35 | 43.7% | <u>60.6%</u> |
| | Circle | 2480 | 22.23 | 25.01 | | |
| | Fort Peck Power Plant | 2070 | 25.37 | 28.16 | | |
| | Vida | 2400 | 21.74 | 24.65 | | |
| Meagher | Lenep | 5880 | 11.93 | 14.38 | 57.3% | <u>78.3%</u> |
| | Martinsdale | 4800 | 15.19 | 17.73 | | |
| | White Sulphur Spr | 5060 | 16.41 | 18.89 | | |
| Mineral | St Regis Ranger Stn | 2680 | 17.61 | 20.05 | 56.1% | <u>63.6%</u> |
| | Superior | 2710 | 21.94 | 24.54 | | |
| Missoula | Lindbergh Lake | 4320 | 14.63 | 17.22 | 69.5% | <u>69.5%</u> |
| | Missoula | 3420 | 18.85 | 21.49 | | |
| | Missoula WSO AP | 3199 | 19.45 | 21.89 | | |
| | Potomac | 3620 | 14.05 | 16.26 | | |
| | Seeley Lake Ranger Station | 4100 | 14.86 | 17.31 | | |
| Musselshell | Melstone | 2920 | 24.22 | 27.17 | 50.0% | <u>56.2%</u> |
| | Roundup | 3386 | 23.98 | 26.79 | | |
| Park | Cooke City | 7460 | 8.68 | 11.63 | 56.9% | <u>67.5%</u> |
| | Gardiner | 5275 | 22.46 | 24.70 | | |
| | Livingston | 4870 | 16.59 | 19.41 | | |
| | Livingston FAA AP | 4656 | 18.63 | 21.39 | | |
| | Wilsall | 5840 | 13.20 | 16.01 | | |
| Petroleum | Flatwillow | 3133 | 22.27 | 25.01 | 44.0% | <u>43.2%</u> |
| Phillips | Content | 2340 | 21.15 | 23.97 | 54.7% | <u>54.9%</u> |
| | Malta 35 | 2650 | 20.28 | 22.99 | | |
| | Malta 7 | 2262 | 21.61 | 24.39 | | |

| Column A | Column B | Column C | Column D | Column E | Column F | Column G |
|--------------|-------------------------|-----------|--|--|---|---|
| County | Weather Station | Elevation | IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches) | IWR Center Pivot Irrigation Seasonal ET (inches) | Management Factor Percentage 1964 - 1973 | <u>Management Factor Percentage 1997 - 2006</u> |
| | Port of Morgan | 2830 | 20.15 | 22.72 | | |
| | Saco | 2180 | 20.13 | 22.70 | | |
| | Zortman | 4660 | 14.38 | 17.40 | | |
| Pondera | Conrad | 3550 | 16.93 | 19.42 | 71.4% | <u>83.7%</u> |
| | Valier | 3810 | 18.31 | 20.96 | | |
| Powder River | Biddle | 3597 | 21.87 | 24.66 | 38.5% | <u>53.3%</u> |
| | Broadus | 3032 | 23.03 | 25.69 | | |
| | Moorhead | 3220 | 23.72 | 26.42 | | |
| | Sonnette | 3900 | 18.32 | 20.96 | | |
| Powell | Deer Lodge | 4678 | 13.14 | 15.32 | 77.6% | <u>100.0%</u> ¹ |
| | Ovando | 4109 | 12.28 | 14.43 | | |
| Prairie | Mildred | 2510 | 22.92 | 25.58 | 59.6% | <u>84.3%</u> |
| | Terry | 2248 | 22.82 | 25.47 | | |
| | Terry 21 | 3260 | 18.65 | 21.34 | | |
| Ravalli | Darby | 3880 | 18.91 | 21.44 | 79.5% | <u>96.1%</u> |
| | Hamilton | 3529 | 19.93 | 22.34 | | |
| | Stevensville | 3380 | 19.19 | 21.44 | | |
| | Sula | 4475 | 12.09 | 14.42 | | |
| | Western Ag Research | 3600 | 19.82 | 22.15 | | |
| Richland | Savage | 1990 | 23.61 | 26.59 | 56.0% | <u>88.4%</u> |
| | Sidney | 1931 | 22.49 | 25.45 | | |
| Roosevelt | Bredette | 2638 | 19.99 | 22.86 | 46.5% | <u>74.6%</u> |
| | Culbertson | 1942 | 20.84 | 23.73 | | |
| | Wolf Point | 1985 | 24.16 | 27.03 | | |
| Rosebud | Birney | 3160 | 24.57 | 27.29 | 47.7% | <u>72.7%</u> |
| | Brandenberg | 2770 | 23.83 | 26.52 | | |
| | Colstrip | 3218 | 23.32 | 26.10 | | |
| | Forsythe | 2520 | 25.17 | 28.04 | | |
| | Ingomar | 2780 | 23.18 | 25.83 | | |
| | Rock Springs | 3020 | 21.35 | 23.93 | | |
| Sanders | Heron | 2240 | 14.82 | 17.73 | 58.8% | <u>62.8%</u> |
| | Thompson Falls Power | 2380 | 22.49 | 25.36 | | |
| | Trout Cr Ranger Station | 2356 | 16.60 | 19.40 | | |
| Sheridan | Medicine | 1975 | 21.64 | 24.49 | 44.8% | <u>80.7%</u> |

| Column A | Column B | Column C | Column D | Column E | Column F | Column G |
|-------------|------------------------------|-----------|--|--|---|---|
| County | Weather Station | Elevation | IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches) | IWR Center Pivot Irrigation Seasonal ET (inches) | Management Factor Percentage 1964 - 1973 | <u>Management Factor Percentage 1997 - 2006</u> |
| | Lake | | | | | |
| | Plentywood | 2063 | 20.64 | 23.48 | | |
| | Raymond Border Station | 2384 | 19.13 | 22.04 | | |
| | Redstone | 2300 | 17.86 | 20.58 | | |
| | Westby | 2120 | 18.10 | 21.033 | | |
| Silverbow | Butte FAA AP | 5545 | 14.73 | 17.06 | 68.8% | <u>93.6%</u> |
| | Divide | 5350 | 15.25 | 17.58 | | |
| Stillwater | Columbus | 3602 | 22.31 | 25.09 | 46.5% | <u>72.5%</u> |
| | Mystic Lake | 6544 | 13.57 | 16.57 | | |
| | Nye | 4840 | 15.00 | 17.93 | | |
| | Rapelje | 4125 | 20.35 | 23.07 | | |
| Sweet Grass | Big Timber | 4100 | 20.60 | 23.47 | 44.7% | <u>49.4%</u> |
| | Melville | 5370 | 12.83 | 15.49 | | |
| Teton | Blackleaf | 4240 | 14.74 | 17.34 | 68.8% | <u>88.4%</u> |
| | Choteau Airport | 3845 | 20.53 | 23.07 | | |
| | Fairfield | 3980 | 19.10 | 21.76 | | |
| | Gibson Dam | 4724 | 13.57 | 16.22 | | |
| Toole | Goldbutte | 3498 | 16.30 | 18.96 | 51.8% | <u>70.8%</u> |
| | Sunburst | 3610 | 18.74 | 21.46 | | |
| | Sweetgrass | 3466 | 18.22 | 21.22 | | |
| Treasure | Hysham | 2660 | 25.01 | 27.78 | 53.4% | <u>91.5%</u> |
| Valley | Glasgow WSO AP | 2293 | 23.48 | 26.12 | 57.9% | <u>74.9%</u> |
| | Hinsdale | 2670 | 22.18 | 25.25 | | |
| | Opheim 10 | 2878 | 16.19 | 18.86 | | |
| | Opheim 16 | 3258 | 16.73 | 19.34 | | |
| Wheatland | Harlowton | 4162 | 17.83 | 20.56 | 46.6% | <u>54.4%</u> |
| | Judith Gap | 4573 | 13.77 | 16.40 | | |
| Wibaux | Carlyle | 3030 | 19.87 | 22.75 | See appropriate adjacent county | |
| | Wibaux | 2696 | 18.69 | 21.50 | | |
| Yellowstone | Billings Water Plant | 3097 | 26.16 | 28.92 | 59.5% | <u>77.8%</u> |
| | Billings WSO | 3648 | 25.49 | 28.22 | | |
| | Huntley Exp | 3034 | 21.92 | 24.61 | | |

| Column A | Column B | Column C | Column D | Column E | Column F | Column G |
|----------|-----------------|-----------|--|--|--|---|
| County | Weather Station | Elevation | IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches) | IWR Center Pivot Irrigation Seasonal ET (inches) | Management Factor Percentage 1964 - 1973 | <u>Management Factor Percentage 1997 - 2006</u> |
| | Station | | | | | |

AUTH: 85-2-112, 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-436, MCA

36.12.1903 CHANGE APPLICATION - ADVERSE EFFECT

(1) ~~The applicant must identify the water rights which the applicant determines may be affected by the changes the applicant is proposing to make and must provide a department general abstract of the water rights identified. Adverse effect for change applications is generally based on the applicant's plan showing the diversion and use of water and operation of the proposed project will not exceed historic use, and can be implemented and properly regulated. A written narrative must be provided addressing the applicant's plan to prevent potential adverse effects to existing water rights, certificates, permits, and water reservations.~~

(2) ~~The applicant's plan must identify, analyze, and document the effects to the other water rights including, but not limited to, the following:~~

(a) through (f) remain the same.

(3) ~~A comparison between the historic consumptive use of the water rights being changed and the consumptive use if the change application was granted must be included with the application.~~

(4) ~~After an application is deemed correct and complete, for public notice purposes, the department shall, independent of the information provided by the applicant under this chapter, identify existing water right owners that may be affected by the proposed application.~~

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.1904 CHANGE APPLICATION CRITERIA - ADEQUATE DIVERSION MEANS AND OPERATION

(1) through (2)(b) remain the same.

(c) the historic and proposed flow rate and volume design capacity;

~~(d) the historic efficiency and the projected overall efficiency, including diversion, conveyance, and system efficiencies.~~

(3) remains the same.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, MCA

36.12.2001 SALVAGE WATER APPLICATIONS (1) Salvage water, defined at 85-2-102(4620), MCA includes seepage, wastewater, or deep percolation water and may be used by the appropriator, moved to other lands, leased, or sold after implementing a water saving method and proving lack of adverse effect to other water rights.

(2) through (4) remain the same.

AUTH: 85-2-113, 85-2-302, MCA

IMP: 85-2-302, 85-2-402, 85-2-419, MCA

REASONABLE NECESSITY: The changes to these rules are reasonably necessary in order to streamline the processing and permitting of water right applications for the department and the applicants. The proposed fee changes in ARM 36.12.103 are to encourage applicants to meet with the department about the proposed project prior to submitting a change or permit application. Meeting with the department prior to submitting the application will help the applicant better understand what needs to be submitted, help the department better understand the project, and in the end will speed up the application process. The proposed fees are expected to generate approximately an additional \$9200 and affect approximately 46 people (20 percent of the permit and change applications).

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Millie Heffner, Department of Natural Resources and Conservation, PO Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0531; or e-mail mheffner@mt.gov, and must be postmarked no later than 5:00 p.m. on August 23, 2012.

5. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment, is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water

resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Lucy Richards, PO Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by e-mail or U.S. Postal Service on July 9 and July 10, 2012, respectively.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton

MARY SEXTON

Director

Natural Resources and Conservation

/s/ Anne Yates

ANNE YATES

Rule Reviewer

Certified to the Secretary of State on July 16, 2012.